

REMARKS

Reconsideration of this application is now being requested. Claims 1-14 and 16-23 are now in this application.

Claims 1-5, 14 and 16-23 were rejected under 35 U.S.C. §103(a) as being unpatentable over Bruckman PN 2002/0051466 in view of Applicants admitted prior art and Tiedemann, Jr. et al PN 5,914,950. The office action alleges that Bruckman teaches a first data transmission rate which is based on measured channel conditions that are measured at the front end, not the receiver. The office action further alleges that Tiedemann teaches a transmitter selecting a transmission rate that is different from and based upon a desired maximum transmission rate of the receiver. Applicant respectfully disagrees. It is applicant's belief that a *prima facie* case of obviousness has not been established by Examiner because none of the references, alone or in combination, teach nor suggest all the elements of claims 1 and 21. First, Bruckman does not teach a first data transmission rate which is based on measured channel conditions that are measured at the front end, not the receiver. Channel conditions are not measured at the front end or any other end in Bruckman. Bruckman teaches data transmission over landline data networks, such as DSL access networks. Landline data networks do not have channel condition concerns as do wireless data networks. Channel conditions in landline data networks are always excellent unlike wireless data networks which are affected by the environment. Thus, there would be no need to measure channel conditions in landline data networks. Bruckman discusses “[f]ragments transmitted over channel 25 are received at a front end 32 of receiver 24” at paragraph [0027]. It appears to applicant that Examiner believes the term “fragments” correspond to a data packet which may have undergone some type of erasure (or fragmentation) as a result of poor channel conditions (because of Examiner's statement regarding channel conditions being measured at the front end). It is applicant's contention that Examiner misunderstood the meaning of this term. The term “fragment”, as used in Bruckman, corresponds to a portion of a packet which was divided. See paragraph

[0026]. Thus, Bruckman does not teach a first data transmission rate which is based on measured channel conditions that are measured at the front end, not the receiver.

Second, Tiedemann does not teach a transmitter selecting a transmission rate that is different from and based upon a desired maximum transmission rate of the receiver. Tiedemann teaches a channel scheduler which selects a minimum transmission rate from a list of maximum supportable transmission rates, a requested transmission rate and a preferred transmission rate. The maximum supportable transmission rates are calculated using equation (2) (see col. 10 line 17 of Bruckman). The requested transmission rate is the transmission rate requested by a remote station. The preferred transmission rate is a transmission rate determined by the channel scheduler and is based on the amount of data to be transmitted. The preferred transmission rate can also be based on the queue size and transmit power available to the remote station, wherein the queue size and available transmit power are sent from the remote station to the channel scheduler. None of the transmission rates from which the channel scheduler can select “is different from and based on a data rate for transmitting the first encoder sub-packet indicated in a first rate indication message from a receiver” (emphasis added). With respect to the maximum supportable transmission rates, such rates are based on equation (2), which involves measurements at the channel scheduler, and not on a rate indication message. With respect to the requested transmission rate, it may be argued that it can be a rate indication message (or data rate indicated therein). In such a case if the requested transmission rate was the transmission rate selected by the channel scheduler, the selected transmission rate would be the based on the requested transmission rate but it would not be different from the requested transmission rate (or data rate indicated therein). With respect to the preferred transmission rate, it might be argued that the queue size and/or available transmit power being sent from the remote station to the channel scheduler can constitute a rate indication message. However, the rate indication message, as defined in the application at page 3 lines 22-24, is a channel condition measurement at a receiver or a data rate calculated based on a channel condition measurement at the receiver. Neither the queue size nor available transmit power can be equated to channel condition measurements or a data rate calculated based on channel condition measurements at the receiver. Thus, Tiedemann does not teach a

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transmitter selecting a transmission rate that is different from and based upon a desired maximum transmission rate of the receiver.

One of the three criteria essential to establishing a *prima facie* case of obviousness requires the prior art references, alone or in combination, to teach or suggest all the claim limitations. For the reasons discussed above, none of the references, alone or in combination, teach or disclose all the elements of claims 1 and 21. Accordingly, it is felt that claims 1 and 21 are patentable under 35 U.S.C. §103(a) over Bruckman in view of Applicants admitted prior art and Tiedemann.

Claims 2-5, 14 , 16-20 and 22-23 depend upon, and include all the limitations of, claims 1 or 21. Accordingly, it is also felt that claims 2-5, 14 , 16-20 and 22-23 are patentable under 35 U.S.C. §103(a) over Bruckman in view of Applicants admitted prior art and Tiedemann.

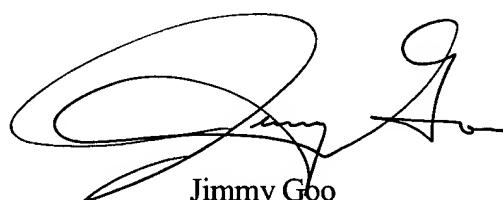
Allowance of claims 1-5, 14 and 16-23 is respectfully being requested.

Respectfully submitted,

Arnab Das

Farooq Khan

Sanjiv Nanda



A handwritten signature in black ink, appearing to read "Goo". Below the signature, the name "Jimmy Goo" is printed in a smaller, clean font.

Reg. No. 36,528

Date: 06 October 2004